

1 THE HONORABLE JOHN C. COUGHENOUR  
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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 SUSAN CASPERSON *et al.*,

11 v.  
12 Plaintiffs,

13 ETHICON, INC. *et al.*,

14 Defendants.

CASE NO. C20-0112-JCC

ORDER

15 This matter comes before the Court on Defendants' motion for leave to file supplemental  
16 summary judgment briefing (Dkt. No. 69) and the parties' stipulated motion to dismiss certain  
17 claims (Dkt. No. 74).

18 This case originated in Multi-District Litigation No. 2327, *In re: Ethicon Inc., Pelvic*  
19 *Repair System Products Liability Litigation*. (See Dkt. Nos. 1 at 1–5, 69 at 1.) Plaintiffs allege  
20 that several of Defendants' products were implanted in Plaintiff Susan Casperson and caused her  
21 significant harm. (See Dkt. Nos. 1 at 3, 71 at 1.) On October 18, 2018, Defendants moved for  
22 partial summary judgment on many of Plaintiffs' claims. (See generally Dkt. Nos. 32–33.) That  
23 motion remains pending. On January 23, 2020, the case was transferred to the Court.

24 On July 16, 2020, the parties filed a joint stipulation of dismissal of certain counts. (Dkt.  
25 No. 74.) Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A), the parties' stipulation is self-  
26 executing, and Plaintiffs' claims for negligence (Count I); strict liability—manufacturing defect

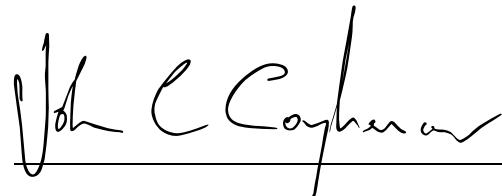
1 (Count II); strict liability—defective product (Count IV); common law fraud (Count VI);  
2 fraudulent concealment (Count VII); constructive fraud (Count VIII); negligent  
3 misrepresentation (Count IX); negligent infliction of emotional distress (Count X); breach of  
4 express warranty (Count XI); breach of implied warranty (Count XII); violation of consumer  
5 protection laws (Count XIII); gross negligence (Count XIV); and unjust enrichment (Count XV)  
6 are DISMISSED with prejudice and without an award of costs or attorney fees to either party.

7 Pursuant to the parties' stipulated dismissal of certain counts, Defendants' motion for partial  
8 summary judgment (Dkt. Nos. 32–33) is DENIED as moot.

9 Defendants also move for leave to file supplemental summary judgment briefing on  
10 "Plaintiffs' failure to warn, design defect, and fraud-based claims." (Dkt. No. 69 at 1.) But  
11 several of the claims Defendants seek to challenge are subject to the parties' stipulated dismissal.  
12 (Compare Dkt. Nos. 69 at 2, 70-1 at 3, with Dkt. No. 74 at 1–2.) Moreover, the parties'  
13 stipulation reserves "Defendants . . . right to seek leave to file additional motions" and provides  
14 that "Plaintiffs will oppose Defendants' motion for leave to file additional summary judgment  
15 motions." (Dkt. No. 74 at 2.) Therefore, pursuant to the parties' stipulation, Defendants' motion  
16 for leave to file supplemental summary judgment briefing (Dkt. No. 69) is DENIED without  
17 prejudice to refile.

18 DATED this 6th day of August 2020.

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John C. Coughenour  
UNITED STATES DISTRICT JUDGE